

Furlough Implementation Tips

The Personnel Cabinet has compiled the following information to assist Cabinets and Independent Agencies with the implementation of the fiscal year 2011 Furlough Plans. This information is broadly disseminated and in many cases will not provide a specific answer to all unique circumstances. However, this guide will provide the consistent practice which should be applied when approaching unique circumstances and equip all Cabinets and Agencies with the appropriate resources to obtain necessary answers. This guide may be updated or revised by the Personnel Cabinet when necessary.

The authority to furlough state executive branch employees is found within the 2010 Executive Branch Budget Bill passed by the General Assembly during the Extraordinary Session. While the Budget Bill is effective for fiscal years 2011 and 2012, it is not known whether furloughs will be utilized in fiscal year 2012 at this time.

Therefore, this information and the Furlough Plan requirements set forth apply for July 2010-June 2011 (fiscal year 2011).

Furlough Plan Decisions:

Furlough Plans shall be created and submitted at the Cabinet level. All plans are to be executed by the Cabinet Secretary. However, for those agencies and offices that fall under the General Government Cabinet, Furlough Plans shall be submitted by the Appointing Authority.

All policy decisions regarding a Furlough Plan, including the execution of notices to employees of particular furlough days and payroll actions, may be made by those individuals with designated Appointing Authority. The designation(s) of Appointing Authority for furlough actions shall be included in each specific Furlough Plan and maintained on file with the Personnel Cabinet. Any changes in designation will need to be addressed with the Personnel Cabinet General Counsel, and these amendments will be made to the documents maintained on file with the Personnel Cabinet as needed. As always, it is crucial that no individual act without the proper designated authority.

Whom to Involve Within Leadership:

For large Cabinets or Independent Agencies, implementation and oversight of the furlough process may seem a daunting task. Cabinet or Agency leadership should first determine the appropriate individuals to designate as Appointing Authorities for the purposes of furlough. It is recommended that a Cabinet look at its organizational structure and ensure that all entities are considered and represented. The individuals utilized to contribute thoughts surrounding furlough decisions need a firm working knowledge of the specific workplace demands of each entity within the organization. These individuals need to be aware of the crucial services that are provided to the public and when these demands are highest. If a determination needs to be made about emergency personnel, or staff typically on-call

during emergency situations, the involved leadership needs to be well-versed on the specific issues faced. Most importantly, they need to be aware of the issues that the employees face in their workplace so that, to the highest extent possible, a Cabinet or Agency may avoid as many problems as possible during the preparation phase.

Furlough Plan Liaisons:

Each Cabinet or Independent Agency has been designated a Furlough Plan Liaison at the Personnel Cabinet. This individual will assist with any specific questions related to furloughs, such as guidance regarding the Furlough Plan, consistent application, exchange of personnel information or documents from the Personnel Cabinet as needed, and determinations regarding any exemptions to the furlough requirements as established by the Regulation. At the time the Furlough Plan is submitted, the Cabinet or Agency should feel confident its Plan will be approved as it has been appropriately vetted and key considerations (such as the furlough day schedule and any exemptions to the furlough requirements) have been approved at the liaison level prior to submission.

Furlough Schedule – Requirements:

State executive branch employees will be furloughed a total of 6 days during fiscal year 2011.

- ❖ The Administration has designated 3 “common” days of furlough (9/3/10, 11/12/10, and 5/27/11) which apply to all state executive branch employees. State government is closed these days. The majority of employees will not be working these days and offices will be shut down.
- ❖ Each Cabinet or Independent Agency is then responsible for ensuring that its employees are furloughed for 1 day during the “non-designated” months of October 2010, March 2011, and June 2011.

However, based upon the manner in which unpaid leave is currently calculated, Appointing Authorities must further limit when employees are furloughed to ensure equity in pay reductions. In some calendar months, the first and second pay period have a different number of working days based upon the standard schedule. For purposes of unpaid furlough leave, all employee pay is reduced pursuant to the standard schedule. As the value of unpaid leave is based upon the number of days within the pay period, employees must be furloughed within the same pay period.

Therefore, all employees shall be furloughed in the pay periods stated below. If any exceptions to the requirements below are necessary, due to staffing considerations or inability to continue critical roles, these exceptions will need to be addressed with the assigned liaison immediately and must be approved within the Furlough Plan.

Established Days:

September 3, 2010
November 12, 2010
May 27, 2010

Non-Designated Days:

October 2010 – FIRST PAY PERIOD
March 2011 – FIRST PAY PERIOD
June 2011 – SECOND PAY PERIOD

Tips for Selection of Non-Designated Days:

The following tips are provided to assist Cabinets and Agencies in selecting the Non-Designated days:

- ❖ Appointing Authorities should choose days that will have a minimal impact on public services
- ❖ Appointing Authorities should ensure that all critical services and roles continue even while employees are furloughed
- ❖ Furlough days must be distributed in a manner which is compliant with the terms set forth in the Regulation
 - Note: While an employee cannot be subject to mandatory furlough for more than 20% of their scheduled work hours in any one work week, an employee may voluntarily furlough additional hours in excess of the 20%
- ❖ Furlough days can vary within the Cabinet, down to the lowest work unit level
 - A Cabinet or Agency should always ensure appropriate oversight and tracking at the local level
 - If a Cabinet or Agency elects varied days, these days should be distributed in a manner that does not disrupt business operations and appropriate measures should be prepared to respond to and cover all critical government services
 - If employees have an option regarding furlough days, a Cabinet or Agency needs to ensure these options are applied in a fair and unbiased manner
 - As with all other requests, an employee's request for a particular furlough day is subject to approval by the supervisor and Appointing Authority – the public interest and the ability to continue operations should be the primary concern
- ❖ There is flexibility in how these furloughs will be applied – employees may have furlough "hours" – can be as little as ¼ hour increments
 - This may become especially important to ensure compliance with the requirement that no employee be furloughed more than 20% of their regular schedule during a work week, particularly for those employees with 12-hour per day work schedules
 - This may also be essential for those Cabinets or Independent Agencies with low staff numbers providing essential services

Exceptions to Shut-Down Days:

There are 24-hour facilities, mental health and correctional facilities, and law enforcement officers within the Kentucky State Police which will require additional flexibility due to the nature of the services

provided to the Commonwealth of Kentucky. These facilities and offices cannot simply close down with the rest of state government – they are typically open during state holidays and must remain open in spite of the furlough days. These particular issues and special circumstances will be addressed in each furlough plan. As provided in the regulatory language, exemptions may apply to all or some of the furlough provisions for these groups based upon these special circumstances.

Additionally, we recognize that other groups also have the need to maintain services during the shut-down days. These special circumstances will be handled on a case-by-case basis within the Furlough Plans.

If a Cabinet or Independent Agency anticipates requesting flexibility with regards to the shut-down furlough days, this must be addressed within the Furlough Plans submitted by August 23, 2010. It is also recommended that immediate contact be made with the assigned furlough liaison.

Capturing Furlough Time:

Each Cabinet or Independent Agency is responsible for ensuring that all employees are actually furloughed as indicated in the submitted Furlough Plan. The Personnel Cabinet has developed a Special Pay Code to apply for furloughs only. This will assist tremendously in the management and auditing of furloughs.

The 922 Special Pay Code will be used for Furlough (mandatory and voluntary)

- ❖ The new code will be in production in UPPS on Sept. 15th for time entry for the Sept. 1-15 pay period
- ❖ All Cabinets or Agencies with independent timekeeping systems that interface with UPPS will need to take appropriate steps to ensure programming is completed by Sept. 1
- ❖ All Cabinets or Agencies who use an electronic Excel timesheet will need to ensure all employee timesheets have the new code by Sept. 1

As an additional tool, the Personnel Cabinet will provide each Cabinet or Agency with an audit report which will provide the furlough hours taken by its employees the previous month. This report will be provided by the 22nd of each month, and will include the following information: Cab/Dept, Position Number, Employee Name, Title, Work County, and Furlough Hours Taken.

Again, it will be the responsibility of each Cabinet or Agency to ensure all required furlough hours have been taken. Additional information regarding the use of the Special Pay Code 922 for furlough will be issued to HR Administrators on Friday, July 23, 2010.

Oversight of Compensatory Time:

While compensatory time may still be earned per Cabinet or Independent Agency discretion in a time of furlough, this should be carefully monitored at the management level. The following information is provided for additional assistance:

- ❖ While most employees will not be working on a day that state government is shut down for furlough, there will be some employees who will work on furlough days and may be eligible to accrue compensatory time per the appropriate regulatory guidelines. Additionally, an employee may be furloughed only a portion of a day due to a particular work schedule, and then due to an emergency situation, that employee may have to work beyond their regular schedule when they report to work. Therefore, there is no outright “ban” on compensatory accrual or overtime on furlough days.
- ❖ However, for most employees on a typical work schedule, there should be no compensatory leave accrued on a day that the employee is furloughed.
 - An employee should not be working from home on a furlough day or asked to work when scheduled off for furlough, unless a true exigent circumstance exists as certified by an Appointing Authority.
 - “Emergency personnel” who may be called on an as-needed basis are also a special circumstance. These issues will be addressed on a case-by-case basis in individual Furlough Plans.
 - Further instructions regarding the coding of time worked on a furlough day will be addressed in the materials issued to HR Administrators on Friday, July 23, 2010.
- ❖ Further, all supervisors are reminded that it is their responsibility to ensure that compensatory leave is properly managed at all times. Per the regulations applicable to 18A employees, prior to its accrual, compensatory leave must be pre-approved. 101 KAR 2:102, Section 5; 101 KAR 3:015, Section 5. For those agencies that do not fall under the provisions of KRS 18A, management is advised to follow the established rules for authorizing the accrual of compensatory time.
- ❖ Employees should not be encouraged or approved to accrue compensatory time or work overtime to “make up” for the furlough reductions. Any compensatory time earned during the week of a furlough should be on a necessary basis and employees are not to work overtime throughout the week in an effort to make up for the furlough day.

Specific Management Issues:

- ❖ **Contract workers**
 - The overall concept is that no contract worker should be working while the rest of state employees are sent home without pay. Further, as part of the Furlough Plan, it must be certified that a contract worker is not getting additional hours or additional duties due to the furlough of a state worker. This should be closely monitored at all levels of management.
 - For purposes of furlough, the contract workers that must be furloughed are those individuals reported pursuant to House Bill 387. This report captures full-time equivalent contractors, not

just contractors working on a full-time basis, and performing a recurrent function for the Cabinet or Independent Agency.

- Contract workers should be discussed in the Furlough Plan under a separate provision to properly account for this separate group of furloughed individuals.

❖ Voluntary Furloughs

- All voluntary furlough requests are subject to the prior approval of the Appointing Authority. This is to ensure that an employee's request does not unduly burden the operations of a working unit or adversely impact services provided to the public.
 - The Voluntary Furlough Request Form must first be submitted by the employee to the supervisor and the Appointing Authority for prior approval. If approved, a copy must also be submitted to the Personnel Cabinet Secretary prior to the first date of furlough.
 - Additionally, an Appointing Authority can consider the circumstances of the requesting employee. For guidance on how to handle specific voluntary furlough issues, please direct these questions to the Personnel Cabinet General Counsel's office.
- An employee cannot voluntarily furlough to take the place of another employee's mandatory furlough obligation.
- The voluntary furlough, per the Budget Bill language, is in addition to the 6 mandatory furlough dates.
- No voluntary furlough requests should be approved until after the Furlough Special Pay Code has been implemented and the dates can be appropriately tracked and audited. This will serve to protect the employees as well as management. Therefore, no voluntary furlough requests may be approved until September 1st.

❖ Extended Leave Requests and Voluntary Furloughs

- At times, management may be asked by an employee if the employee can remain on "leave without pay" status for an extended period of time and have this time considered a "voluntary furlough." Some examples include leave for educational purposes or voluntary unpaid leave to spend time at home.
- This is not what is considered a voluntary furlough and would not be encouraged.
 - While the administration certainly encourages employees to voluntarily reduce their hours as a cost-savings mechanism, these types of extended leave requests will likely create a large burden on the workplace.
 - The duties of these employees will fall on other employees, potentially creating tension in the workplace, overtime concerns, and no recognized budgetary savings. As always, these types of voluntary furlough requests are subject to the approval of the Appointing Authority and all factors should be properly considered. For additional guidance on these issues, feel

free to contact the Personnel Cabinet Division of Employee Management, Director's Office at (502) 564-6464.

❖ Disciplined Employees and Furlough:

- An employee's unpaid time off due to disciplinary action cannot take the place of the mandatory 6 days for furlough that is required. These are two separate actions and should be treated separately. If the employee is already scheduled off for disciplinary matters in advance and it cannot be rescheduled, than an alternate furlough date should be assigned. When possible, a Cabinet or Agency should split up the disciplinary suspension so that the employee's hours are reduced due to the furlough at the appropriate time.
- It is important to remember that if an employee is off on paid investigative leave or paid administrative leave, the employee can be furloughed because the employee is still in paid status. Proper notice must still be provided to the employee of the furlough.

❖ Boards and Commissions

- Full-time board members who are coded and work full-time are subject to furlough.
- There are members of boards and commissions, however, who only receive a per diem rate for their service – these individuals are not subject to furlough.

❖ Calculation of "working days" within Regulations and Statutes

- Many statutes and regulations provide specific deadlines based upon "working days" – such as the 5-working day limitation to request a pre-termination hearing pursuant to KRS 18A.095(4)
- In light of the fact that state government has deemed itself "closed" on the mandated furlough days, it is best practice to consider those days not "working days" for purposes of interpreting and calculating the time limitations for its own employees. It is recommended as a best practice to provide an additional day when calculating time for employee responses, deadlines, etc. if a mandatory shut-down day falls during the calculation period.
- Of course, when considering deadlines by which to file pleadings or other legal documents on behalf of a Cabinet or Agency, it is recommended to take the counter approach and err on the side of caution. An Agency should always file well within the deadline and consider only those days closed by statute as officially mandated "non working days."

❖ "Working" on a Furlough Day

- It is very important that employees who are scheduled off for furlough not be requested to work.
- If an employee takes it upon themselves to work during a period of furlough, disregarding the direction to furlough and without prior approval or request from the supervisor, the employee is subject to disciplinary action for misconduct, up to and including dismissal.

- In addition, if a supervisor willingly permits an employee to work with the knowledge that the employee should otherwise be furloughed, that supervisor is also subject to disciplinary action for misconduct, up to and including dismissal.